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United States District Court  
South Hen District

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Edward Smith  
Petitioner

V.

ANTHONY J. BRIGAND, WARDEN  
Respondent

Civil Case NO. C-1-01-814  
Judge SUSAN J. Dlott, Mag. Judge Jack Stearns  
motion: Writ of Mandate  
Writ of Mandamus  
Reopening Direct Appeal  
4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> Amendment  
Fed Rule App. proc. 4(c)

Motion and Memorandum in Support

Now comes Edward Smith, petitioner, pro se, and hereby moves this Honorable Court for Writ of mandate and Writ of Mandamus for reopening direct appeal and to rule on his 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> Amendment to the U.S. Constitution for the following reasons:

- (1) THE Petitioner has been pursuing his claim of innocence through the state appeal process to no avail and has exhausted "All" state remedies.
- (2) THE Petitioner filed his action for reopening direct appeal on Jan. 30 2001 through the prison mail system. According to Howton V. Lack, Childress V. Brigand, and Fed. Rule App. proc. 4(c). He was and is entitled to the mail Box Rule. (SEE Attachment pgs. 1 thru 6 part of REOPENING direct appeal Submitted in HABEAS Corpus)
- (3) THE Petitioner states that the 6<sup>th</sup> Cir. Court in White V. Schotten, 201 F3d 743, 752 (2000) wrote that OHIO App. Rule proc. 26(B) RE opening

Continued:

(3) Direct appeal is neither part of a state habeas Corpus nor state post conviction proceeding it must be a continuation of activities related to the direct appeal itself. Because a defendant is entitled to effective assistance of counsel on direct appeal: *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 83 L ed 2d 821 (1985).

(4) THE Petitioner states that this court has full Jurisdiction to proceed on the issues at hand and to REVIEW AND RULE immediately "ONLY" his REOPENING direct appeal submitted NOV. 26-01 as part of his writ of habeas Corpus, submitted to this Honorable Court.

Conclusion

THE Petitioner PRAYS this Honorable Court grant the request ask in the name of "Justice" and the U.S. Constitution. THE Petitioner SO PRAYS!

Respectfully Submitted  
~~Edward Smith~~, petitioner  
 Edward Smith, petitioner  
 #A. 346-408 WARREN CORR.

Inst. P.O. Box 120 Lebanon OH 45036

Certificate of Service

I, Edward Smith, petitioner, pro SE, do hereby certify that a copy of this motion was given to prison officials for legal-mail processing and to be mailed to: THELMA THOMAS PRICE (0033976), Ass't Attorney General, Corr. Litigation Section, 140 East Town St. 14<sup>th</sup> Fl., Columbus, OH. 43215-6001 on this 19 day of October, 2003

~~Edward Smith~~, petitioner  
 Edward Smith, petitioner  
 #A. 346-408 WARREN CORR  
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 Lebanon, Ohio 45036